

Internal Revenue Service

Number: **200850021**

Release Date: 12/12/2008

Index Number: 355.01-00, 368.04-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B02

PLR-129346-08

Date:

September 04, 2008

Legend:

Distributing 1 =

Distributing 2 =

Distributing 3 =

Sub 1 =

Controlled 1 =

Controlled 2 =

Sub 2 =

Sub 3 =

Foreign Sub =

State A =

State B =

| | |
|-----------|---|
| Country C | = |
| <u>a</u> | = |
| <u>b</u> | = |
| <u>c</u> | = |
| <u>d</u> | = |
| <u>e</u> | = |
| Date A | = |
| Date B | = |
| Industry | = |

Dear :

This letter responds to your representative's letter of 30 June 2008 requesting rulings as to the Federal income tax consequences of a proposed series of transactions. The information submitted in that letter and in subsequent correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding whether any of the Distributions described below: (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest in

the distributing corporation or the controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

SUMMARY OF FACTS

Distributing 3 is a State A corporation and the common parent of an affiliated group of corporations (the “Distributing 3 Group”) that files a consolidated Federal income tax return using the accrual method of accounting and a calendar year. Distributing 3 is engaged in Industry, primarily through its wholly-owned indirect subsidiaries Sub 1 and Controlled 1 and their subsidiaries.

Distributing 2 is a State A corporation and a direct wholly-owned subsidiary of Distributing 3. Distributing 1 is a State B corporation and a direct wholly-owned subsidiary of Distributing 2. Distributing 1 and Distributing 2 are holding companies.

Controlled 1 and Sub 1, both State B corporations, are direct wholly-owned subsidiaries of Distributing 1. Controlled 2, a State A corporation, is a newly-formed direct wholly-owned subsidiary of Distributing 3.

Controlled 1 has advanced its excess cash to Distributing 3 as an intercompany loan (the “Distributing 3 Payable”). As of Date A, the principal amount of the Distributing 3 Payable held by Controlled 1 was approximately \$a.

Certain trademarks relating to the business of the Distributing 3 Group are owned by Sub 2, a wholly-owned second-tier subsidiary of Sub 1. Sub 2 licenses certain trademarks to Sub 3, a direct wholly-owned subsidiary of Controlled 1 (the “Sub 3 License”). Sub 3 sublicenses certain trademarks to Controlled 1 and to Foreign Sub, a direct wholly-owned Country C subsidiary of Controlled 1 (together, the “Group Sublicense”) and to third parties (the “Third Party Sublicenses”). The Third Party Sublicenses generate royalties to Sub 3 of approximately \$b per year, which Sub 3 then pays to Sub 2. The Third Party Sublicenses expire on Date B.

Royalties payable by Controlled 1 and Foreign Sub to Sub 3 under the Group Sublicense have been accrued as payables from Controlled 1 and Foreign Sub to Sub 3 (the “Controlled 1 Payables”), and royalties payable by Sub 3 to Sub 2 under the Sub 3 License have been accrued as a payable from Sub 3 to Sub 2 (the “Sub 3 Payable”). As of Date A, the principle amount of the Controlled 1 Payables was approximately \$c and the principal amount of the Sub 3 Payable was approximately \$d.

PROPOSED TRANSACTIONS

For what are represented to be valid business purposes, the following series of transactions is proposed:

(I) Sub 3 will distribute a trademark of nominal value to Controlled 1. This distribution will be treated by taxpayer as a distribution under § 301 in which Sub 3 will recognize gain, if any, under § 311(b).

(II) Distributing 1 will distribute 100% of the stock of Controlled 1 to its shareholder, Distributing 2. (The “First Internal Distribution.”)

(III) Distributing 2 will distribute 100% of the stock of Controlled 1 to its shareholder, Distributing 3. (The “Second Internal Distribution.”)

(IV) Distributing 3 will assume the Controlled 1 Payables in exchange for: (i) the stock of Sub 3, which will be transferred to Distributing 3; and (ii) settlement of the Distributing 3 Payable. The amount by which the amount of the Controlled 1 Payables exceeds the sum of the fair market value of the stock Sub 3 plus the amount of the Distributing 3 Payable will be treated by taxpayer as a contribution by Distributing 3 to Controlled 1 (the “Controlled Contribution”).

(V) Distributing 3 will transfer approximately \$e and 100% of the stock of Controlled 1 to Controlled 2 in exchange for 100% of the stock of Controlled 2. (The “Contribution.”)

(VI) Distributing 3 will distribute 100% of the stock of Controlled 2, on a pro rata basis, to holders of shares of Distributing 3 common stock. (The “External Distribution.”) No fractional shares will be issued to Distributing shareholders. Instead, an independent agent will aggregate and sell on the open market all fractional shares and transfer the proceeds to shareholders otherwise entitled to fractional shares.

Following the External Distribution, Distributing 3 and Controlled 2 will operate independently of each other. The companies will agree contractually to continue certain transitional arrangements for a limited time after the External Distribution. In addition, the companies will agree to certain mutually beneficial commercial arrangements. The commercial agreements between the companies are intended to reflect terms similar to those that would be agreed to by parties bargaining at arm’s length.

Distributing 3 and Controlled 2 plan to enter into a separation and distribution agreement, a tax matters agreement, an employee matters agreement, a transition services agreement, a non-compete agreement, a brand licensing agreement, and other agreements as appropriate, including certain commercial agreements.

REPRESENTATIONS

Distributing 3 has made the following representations in connection with the First Internal Distribution:

(a) The indebtedness (if any) owed by Controlled 1 to Distributing 1 (or any successors to Distributing 1) after the First Internal Distribution will not constitute stock or securities.

(b) No part of the consideration to be distributed by Distributing 1 in the First Internal Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder.

(c) The five years of financial information submitted on behalf of the business conducted by Distributing 1's separate affiliated group is representative of its present operation, and, with regard to it, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) The five years of financial information submitted on behalf of the business conducted by Controlled 1's separate affiliated group is representative of its present operation, and, with regard to it, there have been no substantial operational changes since the date of the last financial statements submitted.

(e) Following the First Internal Distribution, Distributing 1 and Controlled 1 will each continue the active conduct of its business, independently and with its separate employees.

(f) The First Internal Distribution will be carried out for the corporate business purpose of facilitating the External Distribution, which will be carried out for the corporate business purposes described below. The distribution of stock of Controlled 1 in the First Internal Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(g) The First Internal Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both.

(h) Distributing 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the First Internal Distribution.

(i) Except in connection with the continuing transactions under the intercompany agreements, no intercorporate debt will exist between Distributing 1 and Controlled 1 at the time of, or subsequent to, the First Internal Distribution.

(j) Immediately before the First Internal Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. § 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147; and Treas. Reg. § 1.1502-13 as currently in effect).

(k) Payments made in connection with continuing transactions (if any) between Distributing 1 and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except for certain transactions and arrangements under the transition services agreement, which may be based on cost or cost-plus arrangements, and for certain arrangements under the brand licensing agreement.

(l) No two parties to the First Internal Distribution are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).

(m) The First Internal Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest (within the meaning of section 355(d)(4)) in Distributing 1 or Controlled 1.

(n) The First Internal Distribution will not be a disqualified distribution (as defined in section 355(d)(2)) because immediately after the First Internal Distribution: (i) no person (determined after applying section 355(d)(7)) will hold disqualified stock (defined in section 355(d)(3)) in Distributing 1 that will constitute a 50% or greater interest (defined in section 355(d)(4)) in Distributing 1, and (ii) no person (determined after applying section 355(d)(7)) will hold disqualified stock (defined in section 355(d)(3)) in Controlled 1 that will constitute a 50% or greater interest (defined in section 355(d)(4)) in Controlled 1.

Distributing 3 has made the following representations in connection with the Second Internal Distribution:

(aa) The indebtedness (if any) owed by Controlled 1 to Distributing 2 (or any successors to Distributing 2) after the Second Internal Distribution will not constitute stock or securities.

(bb) No part of the consideration to be distributed by Distributing 2 in the Second Internal Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder.

(cc) Following the Second Internal Distribution, Distributing 2 and Controlled 1 will each continue the active conduct of its business, independently and with its separate employees.

(dd) The Second Internal Distribution will be carried out for the corporate business purpose of facilitating the External Distribution, which will be carried out for the corporate business purposes described below. The distribution of stock of Controlled 1 in the Second Internal Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(ee) The Second Internal Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled 1 or both.

(ff) Distributing 2 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Second Internal Distribution.

(gg) Except in connection with the continuing transactions under the intercompany agreements, no intercorporate debt will exist between Distributing 2 and Controlled 1 at the time of, or subsequent to, the Second Internal Distribution.

(hh) Immediately before the Second Internal Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. § 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147; and Treas. Reg. § 1.1502-13 as currently in effect).

(ii) Payments made in connection with continuing transactions (if any) between Distributing 2 and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except for certain transactions and arrangements under the transition services agreement, which may be based on cost or cost-plus arrangements, and for certain arrangements under the brand licensing agreement.

(jj) No two parties to the Second Internal Distribution are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).

(kk) The Second Internal Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest (within the meaning of section 355(d)(4)) in Distributing 2 or Controlled 1 (including any predecessor or successor of any such corporation).

(ll) The Second Internal Distribution will not be a disqualified distribution (as defined in section 355(d)(2)) because immediately after the Second Internal Distribution: (i) no person (determined after applying section 355(d)(7)) will hold disqualified stock (defined in section 355(d)(3)) in Distributing 2 that will constitute a 50% or greater interest (defined in section 355(d)(4)) in Distributing 2, and (ii) no person (determined after applying section 355(d)(7)) will hold disqualified stock (defined in section 355(d)(3)) in Controlled 1 that will constitute a 50% or greater interest (defined in section 355(d)(4)) in Controlled 1.

Distributing 3 has made the following representations in connection with the Contribution and the External Distribution:

(aaa) The indebtedness (if any) owed by Controlled 2 to Distributing 3 (or any successors to Distributing 3) after the External Distribution will not constitute stock or securities.

(bbb) No part of the consideration to be distributed by Distributing 3 in the External Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder.

(ccc) Following the External Distribution, Distributing 3 and Controlled 2 will each continue the active conduct of its business, independently and with its separate employees.

(ddd) The External Distribution will be carried out for the following corporate business purposes: (1) enhanced management focus; (2) more efficient capitalization; (3) increased financial transparency; and (4) alignment of management and employee incentives with company performance. The distribution of stock of Controlled 2 in the External Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(eee) The External Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing 3 or Controlled 2 or both.

(fff) Distributing 3 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the External Distribution, except with respect to the payment of the Distributing 3 Payable in exchange for its assumption of the Controlled 1 Payables as described above.

(ggg) Except in connection with the continuing transactions under the intercompany agreements, no intercorporate debt will exist between Distributing 3 and Controlled 2 at the time of, or subsequent to, the External Distribution.

(hhh) Immediately before the External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. § 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147; and Treas. Reg. § 1.1502-13 as currently in effect). Further, Distributing 3's excess loss account in the Controlled 2 stock, if any, will be included in income immediately before the External Distribution (see Treas. Reg. § 1.1502-19).

(iii) Payments made in connection with continuing transactions (if any) between Distributing 3 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except for certain transactions and arrangements under the transition services agreement, which may be

based on cost or cost-plus arrangements, and for certain arrangements under the brand licensing agreement.

(jjj) No two parties to the External Distribution are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).

(kkk) The External Distribution is not part of plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest (within the meaning of section 355(d)(4)) in Distributing 3 or Controlled 2.

(lll) The External Distribution will not be a disqualified distribution (as defined in section 355(d)(2)) because immediately after the External Distribution: (i) no person (determined after applying section 355(d)(7)) will hold disqualified stock (defined in section 355(d)(3)) in Distributing 3 that will constitute a 50% or greater interest (defined in section 355(d)(4)) in Distributing 3, and (ii) no person (determined after applying section 355(d)(7)) will hold disqualified stock (defined in section 355(d)(3)) in Controlled 2 that will constitute a 50% or greater interest (defined in section 355(d)(4)) in Controlled 2.

RULINGS

Based solely on the information submitted and the representations set forth above, we rule as follows:

The First Internal Distribution

(1) No gain or loss will be recognized by Distributing 1 upon the distribution of the Controlled 1 stock in the First Internal Distribution. Section 355(c)(1).

(2) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 upon receipt of the Controlled 1 stock in the First Internal Distribution. Section 355(a)(1).

(3) The aggregate basis of the stock of Distributing 1 and the stock of Controlled 1 in the hands of Distributing 2 immediately after the First Internal Distribution will equal the aggregate basis of the stock of Distributing 1 held by Distributing 2 immediately before the First Internal Distribution, allocated between the stock of Distributing 1 and the stock of Controlled 1 in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2). Sections 358(a)(1), (b)(2), and (c).

(4) The holding period of the stock of Controlled 1 received by Distributing 2 in the First Internal Distribution will include the holding period of the stock of Distributing 1 with respect to which the stock of Controlled 1 is distributed, provided that such stock of

Distributing 1 is held by Distributing 2 as a capital asset on the date of the First Internal Distribution. Section 1223(1).

(5) Earnings and profits will be allocated between Distributing 1 and Controlled 1 in accordance with section 312(h), and Treas. Reg. § 1.312-10(b) and § 1.1502-33.

The Second Internal Distribution

(6) No gain or loss will be recognized by Distributing 2 upon the distribution of the Controlled 1 stock in the Second Internal Distribution. Section 355(c)(1).

(7) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 3 upon receipt of the Controlled 1 stock in the Second Internal Distribution. Section 355(a)(1).

(8) The aggregate basis of the stock of Distributing 2 and the stock of Controlled 1 in the hands of Distributing 3 immediately after the Second Internal Distribution will equal the aggregate basis of the stock of Distributing 2 held by Distributing 3 immediately before the Second Internal Distribution, allocated between the stock of Distributing 2 and the stock of Controlled 1 in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2). Sections 358(a)(1), (b)(2), and (c).

(9) The holding period of the stock of Controlled 1 received by Distributing 3 in the Second Internal Distribution will include the holding period of the stock of Distributing 2 with respect to which the stock of Controlled 1 is distributed, provided that such stock of Distributing 2 is held by Distributing 3 as a capital asset on the date of the Second Internal Distribution. Section 1223(1).

(10) Earnings and profits will be allocated between Distributing 2 and Controlled 1 in accordance with section 312 (h), and Treas. Reg. 1.312-10(b) and § 1.1502-33.

The Contribution and the External Distribution

(11) The Contribution together with the External Distribution will be a reorganization under section 368(a)(1)(D). Distributing 3 and Controlled 2 will each be a “party to the reorganization” under section 368(b).

(12) No gain or loss will be recognized by Distributing 3 upon the transfer of assets to Controlled 2 in exchange for stock of Controlled 2 in the Contribution. Section 361(a).

(13) No gain or loss will be recognized by Controlled 2 on the receipt of assets of Distributing 3 in exchange for stock of Controlled 2 in the Contribution. Section 1032(a).

(14) The basis of each asset received by Controlled 2 from Distributing 3 in the Contribution will equal the basis of such asset in the hands of Distributing 3 immediately before the Contribution. Section 362(b).

(15) The holding period of each asset received by Controlled 2 from Distributing 3 in the Contribution will include the period during which Distributing 3 held such asset. Section 1223(2).

(16) No gain or loss will be recognized by Distributing 3 upon the distribution to the shareholders of Distributing 3 of the stock of Controlled 2 in the External Distribution. Section 361(c).

(17) No gain or loss will be recognized by (and no amount will be included in the income of) the shareholders of Distributing 3 upon the receipt of the stock of Controlled 2 in the External Distribution. Section 355(a)(1).

(18) The aggregate basis of the stock of Distributing 3 and the stock of Controlled 2 in the hands of each shareholder of Distributing 3 immediately after the External Distribution (including any fractional share interest to which such shareholder may be entitled) will equal the aggregate basis of the stock of Distributing 3 held by such shareholder immediately before the External Distribution allocated between the stock of Distributing 3 and the stock of Controlled 2 in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2). Sections 358(a)(1), (b), and (c).

(19) The holding period of the stock of Controlled 2 in the hands of any shareholder of Distributing 3 immediately after the External Distribution (including any fractional share interest to which such shareholder may be entitled) will include the holding period of the stock of Distributing 3 with respect to which the stock of Controlled 2 is distributed, provided that such stock of Distributing 3 is held by such shareholder as a capital asset on the date of the External Distribution. Section 1223(1).

(20) Earnings and profits will be allocated between Distributing 3 and Controlled 2 in accordance with section 312(h), and Treas. Reg. § 1.312-10(a) and § 1.1502-33.

(21) Following the External Distribution, Controlled 2 will not be a successor to Distributing 3 for purposes of section 1504(a)(3).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this letter. Moreover, no opinion is expressed about the tax treatment of the transactions (or any other matter) under other provisions of the Code or regulations or about the tax treatment of any conditions at the time of, or effects resulting from, the transactions not

specifically covered by the above rulings. In particular, no opinion is expressed regarding whether any of the distributions (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

PROCEDURAL STATEMENTS

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Douglas C. Bates
Assistant to the Branch Chief, Branch 5
(Corporate)